ATTACHMENT**:**

# Programmatic Endangered Species Act Consultation for Categories of Activities Requiring Department of the Army Permits

Omaha and Walla Walla Districts, U.S. Army Corps of Engineers have completed a programmatic consultation with United States Fish and Wildlife Service (USFWS) for 8 categories of activities requiring Department of the Army permits. This consultation, which covers waters of the United States within the state of Montana and Idaho, complies with the provisions of Section 7 of the Endangered Species Act (ESA).

The following categories of activities are evaluated by the programmatic consultation. The biological opinion includes limitations on some of these categories, as noted below. In addition, the biological opinion specifies terms and conditions for each of the categories which must be met to qualify for coverage under this consultation.

The biological opinion, including the mandatory terms and conditions, is available online at http://www.nww.usace.army.mil/BusinessWithUs/RegulatoryDivision/PermitProcesses/ESAProgrammaticConsultation.aspx or http://www.nwo.usace.army.mil/Missions/RegulatoryProgram/Montana.aspx. Printed copies may be requested by calling the Walla Walla District Regulatory Division at (509) 527-7150 or the Omaha District, Montana Regulatory Office at (406) 441-1375.

If a proposed action does not qualify for the categories described below, if it is specifically excluded from the biological opinion, or if it does not meet the terms and conditions of the biological opinion, an individual consultation will be required before a decision can be made on a permit application.

**1.** ***Maintenance:*** (Nationwide Permit [NWP] 3) Maintenance involves the repair, rehabilitation, or replacement of any previously authorized, currently serviceable, structure or fill provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Examples of maintenance activities covered by this SLOPES include clearing accumulated organic debris from inlets, outlets, abutments, and piers, removal of sediment or debris inside a culvert or under a bridge, replacement and maintenance of culverts or bridges, or re-burying exposed utility lines. These actions typically involve excavation, grading, and placement of fill material. Small organic debris consists of twigs, leaves, and bushes. Large organic debris includes tree trunks, rootwads, and branches.

NWP 3 does not allow a change in use of the structure or fill; however, minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement are authorized.

**2.** ***Utility Line Activities:*** (NWP 12) Utility line construction or repair could involve excavation, temporary side casting of excavated material, placement of pipeline or cable in a trench, backfilling of the trench, and restoration of the work site to pre-construction contours and vegetation. A utility line is any pipe or pipeline for the transportation of any gaseous, liquid, liquefiable, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of

electrical energy, telephone and telegraph messages, and radio and television communication. The term "utility line" does not include activities which drain a water of the United States, such as drainage tile; however, it does apply to pipes conveying drainage from one area to another. Infiltration galleries are considered utility lines.

**3.** ***Minor Discharges and Excavation*****:** (NWPs 18 and 19) This category includes minor discharges and excavations such as small structural fills, minor excavations or dredging necessary for culvert maintenance, installation of outfall structures and minor repairs of previously authorized structures or fills. The quantity of fill or excavation is limited to 25 cubic yards below the ordinary high water mark.

**4.** ***Temporary Construction, Access, and Dewatering*****:** (NWP 33) This category of activities includes temporary structures, fills, and work that may be associated with other activities that may not necessarily be covered by this SLOPES. For example, a state's Department of Transportation (DOT) may be consulting with USFWS on a large federally funded project. The DOT's contractor, who will provide the details of the temporary work associated with the highway project, will be given the opportunity to review and incorporate this SLOPES into their proposal for temporary facilities, with the understanding that if they comply with the approved conservation measures, the DOT will not have to consult with the USFWS on the activities associated with the temporary facilities. The outcome may be that the contractor's proposal is approved faster and work may begin sooner than if the DOT had to consult separately for the temporary work, the details of which are usually not known at the time of consultation on the larger parent project.

**5.** ***Streambank and Shoreline Stabilization***: (NWP 13) Stabilization activities include the placement of material along or adjacent to streambanks or shorelines for the purpose of increasing resistance to erosion by moving water. Methods may include hardening the bank with vegetation, soil, large wood, rock, or by creating structures to divert stream flow away from the bank or reduce the effects of wave action by utilizing in-water structures such as dikes, groins, buried groins, drop structures, porous weirs, weirs, riprap, rock toes, and similar structures. Streambank stabilization usually includes the placement of fill material below the ordinary high water mark of streams in order to prevent damage to existing adjacent structures caused by the erosive force of flowing water. Shoreline stabilization involves placing fill material below the ordinary high water mark in order to protect lake and reservoir shorelines from erosion caused by wind and wave action.

This SLOPES encourages the use of bioengineering principals and practices. Bioengineering is defined as the integration of living woody and herbaceous materials along with organic and inorganic materials to increase the strength and structure of soil (NRCS, 1998). The following streambank and shoreline stabilization methods, individually or in combination, are included in this SLOPES: woody plantings; herbaceous cover; deformable soil reinforcement; coir logs, straw bales and straw logs to trap sediment; engineered log jams (use of concrete logs is not proposed); and stream barbs made of wood. The use of quarried stone riprap or barbs would be limited as follows: The elevation of the rock toe would be limited to the ordinary high water mark. The portion of bank above the rock toe will be vegetated with native trees, shrubs, grasses and forbs according to an approved revegetation plan submitted concurrently with the application.

**6.** ***Linear Transportation Projects*****:** (NWP 14) Linear transportation projects include new highway construction or improvement of an existing highway, road, street or bridge, including widening, repairing, realigning, reconstructing or removing existing roads and bridges, or replacing culverts

under roads including temporary fills and access fills. Linear transportation projects may involve excavation, grading, filling, placement of culverts, construction of bridges, and construction of drainage features. Linear transportation projects may also include construction and maintenance of railroad tracks and supporting fill, bridges, trestles, and culverts.

**7. *Aquatic Habitat Restoration, Establishment, and Enhancement Activities*:** (NWP 27) This category may include road decommissioning; actions to set back or remove water control structures (e.g., small dams [<10' head difference], levees, dikes, berms, weirs); remove trash and other artificial debris dams that block fish passage; provide storm water management that restores natural or normative hydrology; remove sediment bars or terraces that block fish passage within 50 feet of a tributary mouth; place large wood within the channel or riparian area; installation of stream flow and current deflectors; enhancement, restoration or creation of riffle and pool stream structure; placement of in-stream habitat structures; modifications of the streambed and/or banks to restore or create stream meanders; reshaping of streambanks to reconnect with adjacent floodplain; installation of streambank vegetation; backfilling of artificial channels and drainage ditches; removal of existing drainage structures; construction of small nesting islands; construction of open water areas; activities needed to reestablish vegetation; and other activities described in Nationwide Permit 27.

Refer to the biological opinion on-line at the Walla Walla Regulatory Division website: http://www.nww.usace.army.mil/BusinessWithUs/RegulatoryDivision/PermitProcesses/ESAProgrammaticConsultation.aspx or the Montana Regulatory office, Omaha District at http://www.nwo.usace.army.mil/Missions/RegulatoryProgram/Montana.aspx for the other terms and conditions which apply to each category above.